

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

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CC Docket No. 96-98

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

The Commission should regulate all aspects of LEC-CMRS interconnection compensation under Sections 332 and 2(b) of the Communications Act, not Sections 251 and 252. As a matter of law and policy, it is the correct outcome. Why?:

- Different Law: Congress intended that Section 332 govern the competitive development of CMRS, both in the mobile services market, and as a competitor to the local loop. For this reason, the Commission's authority over all aspects of LEC-CMRS interconnection compensation arises from Sections 332 and 2(b), not the 1996 legislation. If the Commission applies Sections 251 and 252 to LEC-CMRS interconnection, it must conclude that important parts of Section 332 have been repealed by implication. The CMRS regulatory structure established by Section 332, which purposely limits state roles in regulating CMRS would give way as state regulatory oversight would be re-imposed. The state would now have a role which did not exist, and was not contemplated, under Section 332.
- Different Facts: LEC-CMRS interconnection is different from LEC-CLEC interconnection with regard to traffic flows and termination costs. That is, in the LEC-CMRS environment, LECs terminate a much larger volume of CMRS traffic than vice-versa, but they have substantially lower termination costs. On the other hand, LEC-CLEC interconnection is much more likely to involve balanced traffic flows and similar termination costs. These factual distinctions warrant separate Commission consideration.
- Practical Considerations: The Commission will not enhance, and may actually impair, CMRS development if it subsumes LEC-CMRS interconnection issues into the larger Sections 251 and 252 proceeding, a proceeding that is one of the most complex and important in the history of the FCC. The primary issue to be resolved in the LEC-CMRS interconnection proceeding involves interconnection compensation. In this docket, though, interconnection compensation is merely one of a myriad of issues to be considered. There is no reason to delay the CMRS compensation determination.

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**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA"), hereby submits its Comments in the above-captioned proceeding.¹

INTRODUCTION

Sections 251 and 252² are superfluous to the Commission's consideration of the details surrounding CMRS' entry into the local exchange market, including interconnection compensation. In 1993, Congress acknowledged the potential of CMRS providers to serve as competitive local telephone carriers, and both unmistakably provided the Commission the jurisdiction to regulate LEC-CMRS interconnection and preempted state regulation of CMRS providers' entry and rates. If Sections 251 and 252 are utilized

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 96-182 (released April 19, 1996) ("Notice").

² 47 U.S.C. §§ 251, 252.

to regulate LEC-CMRS interconnection arrangements, Section 332 as enacted in 1993 and preserved in the 1996 Act will be improperly circumvented.

In addition, LEC-CMRS interconnection arrangements are factually distinct from other LEC interconnection relationships. That is, LEC-CMRS interconnection involves different traffic flows and different traffic termination costs, while LEC-CLEC termination is much more likely to involve balanced traffic flows and similar termination costs. These distinctions require independent consideration.

Finally, as a practical matter, if the Commission regulates LEC-CMRS interconnection arrangements under Sections 251 and 252, instead of Section 332, CMRS development and entry into the market as a competitor to the local landline telephone provider will be hindered.

I. Sections 332 and 2(b) Provide the Jurisdictional Bases for Commission Consideration of the LEC-CMRS Interconnection Relationship, not the 1996 Act's Interconnection Provisions.

As CTIA stated in earlier comments,³ Congress did not intend Sections 251 and 252 to regulate LEC-CMRS interconnection arrangements. Generally, Congress enacted the 1996 Act in order

³ CTIA filed comments in Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking in CC Dockets 95-185 and 95-54, FCC 95-505 (released January 11, 1996) ("CTIA's LEC-CMRS Interconnection Comments").

to provide for a pro-competitive, deregulatory telecommunications market.⁴ Congress already had provided for this in the mobile services market in the 1993 revisions of Section 332.⁵ Of the provisions, Section 332 specifically provided the Commission jurisdiction over LEC-CMRS interconnection arrangements pursuant to its general jurisdiction under Section 201⁶ and specifically preempted state regulation of CMRS providers' entry and rates.⁷

Moreover, in 1993, Congress specifically acknowledged and approved of CMRS providers offering basic telephone service in competition with wireline carriers, subject only to the conditions specified in Section 332.⁸ In fact, Congress'

⁴ See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. at 1 (1996).

⁵ 47 U.S.C. § 332(c).

⁶ Section 332 states, in relevant part, that "[u]pon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act." 47 U.S.C. § 332 (c) (1) (B).

⁷ Section 332(c) (3) (A) states, in relevant part, that "[n]otwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services."

⁸ H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess, 493 (1993) (stating that if telephone subscribers had no other means for basic telephone service except from a mobile services carrier, then states could regulate the service for universal service concerns; however, if several mobile services carriers offered basic telephone service in the same service areas, states were prohibited from regulating their rates).

reservation of state authority to regulate CMRS rates in such circumstances was severely constrained.⁹ In essence, Congress in 1993 fully recognized and sanctioned an evolutionary process for CMRS which includes the competitive provision of local exchange service. Thus, the regulatory scheme which should apply has been in place for several years, and the interconnection and state pre-approval requirements in Sections 251 and 252 need not apply to CMRS.

An analysis of Sections 251-253 underscores Congress' intent that LEC-CMRS interconnection arrangements are to be regulated by Section 332. Section 251 contains a savings clause which preserves the Commission's authority to govern LEC-CMRS interconnection under Section 201.¹⁰ Specifically, Section 201 provides the Commission jurisdiction to order LECs to interconnect with CMRS providers.¹¹ Section 332(c)(1)(B) acknowledges and preserves this authority.¹² In addition, state authority under Section 252 to review and approve interconnection agreements is expressly conditioned, in part, by Section 253 of

⁹ 47 U.S.C. 332 (c) (3) (A) (ii).

¹⁰ Section 251(i) states that "[n]othing within [Section 251] shall be construed to limit or otherwise affect the Commission's authority under section 201."

¹¹ As the Commission has held for almost a decade, under Section 201, it has "plenary jurisdiction . . . over the physical plant used in the interconnection of cellular carriers." See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, Declaratory Ruling, 2 FCC Rcd 2910, 2912.

¹² See supra note 6.

the Act¹³ which prohibits states from imposing entry barriers.¹⁴

In turn, Section 253 includes a savings clause which expressly preserves the state rate and entry preemption provisions of Section 332.¹⁵

Sections 251 and 252 apply to LEC-CMRS interconnection only if the Commission concludes that important parts of Section 332 have been repealed by implication. As a jurisprudential matter, that would be a very unusual conclusion. Repeal by implication is highly disfavored and is found only in cases of irreconcilable conflict between statutory provisions.¹⁶

¹³ See, e.g., 47 U.S.C. § 252(e)(3) ("Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.") (emphasis added); 47 U.S.C. § 252(f)(2).

¹⁴ Section 253(a) states, in relevant part, that: No state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. 47 U.S.C. § 253(a).

¹⁵ Subsection 253(e) states that "[n]othing in this section shall affect the application of Section 332(c)(3) to commercial mobile service providers." 47 U.S.C. § 253(e).

Both Sections 332(c)(3) and 2(b) operate to preempt state plans contrary to the Commission's LEC-CMRS interconnection termination charges, including a reciprocal termination plan. See CTIA's LEC-CMRS Interconnection Comments at 64-82 and Reply Comments at 22-31.

¹⁶ Morton v. Mancari, 417 U.S. 535 (1974); Yakima v. Tribes of Yakima County, 502 U.S. 251 (1992) (citing Posadas v. National City Bank, 296 U.S. 497, 503 (1936) ("cardinal rule . . . that repeals by implication are not favored."))

The CMRS regulatory structure established by Section 332, which purposely limits state roles in regulating CMRS,¹⁷ would give way as state regulatory oversight would be re-imposed. The states would now have a role which did not exist, and was not contemplated, under Section 332.

The 1993 provisions, not Sections 251 and 252, will ensure that CMRS providers receive interconnection with LECs. Given the various Section 332 savings clauses and the exemptions for CMRS providers found throughout the 1996 Act, it is evident that Congress intended Section 332 to apply with full force after passage of the 1996 Act, notwithstanding Sections 251 and 252.¹⁸ In effect, Congress provided a regulatory framework for full, competitive development of CMRS in 1993; precisely what it sought to accomplish in other telecommunications markets in passing the 1996 Act.¹⁹

¹⁷ House Report at 260.

¹⁸ See, e.g., 47 U.S.C. § 153(26) (local exchange carrier does not include a person engaged in the provision of CMRS under section 332(c) "except to the extent that the Commission finds that such service should be included in the definition of such term"); 47 U.S.C. § 251(i) (Section 201 savings clause); 47 U.S.C. § 253(e) (§ 332(c) savings clause); Section 705 of the 1996 Act, which adds 47 U.S.C. § 332(c)(8) (CMRS not required to provide equal access).

¹⁹ It would make sense on some level to introduce state oversight of the LEC-CMRS interconnection relationship (as contemplated in Sections 251 and 252) if the mobile services market was static or non-responsive to competitive stimuli. The opposite is true, though. The CMRS industry continues to thrive under the relaxed regulatory structure envisioned by Section 332, and consumers now have more choice and the lowest prices available since CMRS' inception.

II. Regulation of LEC-CMRS Interconnection Arrangements in This Proceeding to Implement Sections 251 and 252 Would Not Adequately Reflect CMRS Differences.

In addition to the legal basis for separate regulatory treatment of LEC-CMRS interconnection, as a practical matter, this proceeding to implement Sections 251 and 252 is not the appropriate forum for regulating LEC-CMRS interconnection arrangements. The main reason is that LEC-CMRS interconnection arrangements are factually different from other LEC interconnection relationships. CMRS uses significantly different technologies to provide service to end-users than LECs and other CLECs. The difference, in this specific context, produces important distinctions warranting separate treatment.

Two factual distinctions are particularly important: different traffic flows and different traffic termination costs. There currently exists an imbalance in traffic volumes between LEC to cellular and cellular to LEC traffic.²⁰ This is due, in part, to the technical structure of cellular systems. Unlike other LEC interconnection arrangements, LEC subscriber access to a cellular user is often limited by the battery life of a portable handset and the amount of time a cellular user is in his/her car.²¹ These conditions, among others, determine the

²⁰ See CTIA's LEC-CMRS Interconnection Comments, attached as an exhibit: Dr. Bridger Mitchell and Dr. Steven Brenner, Charles River Associates, Economic Issues in the Choice of Compensation Arrangements for Interconnection Between CMRS and Local Exchange Carriers and Commercial Mobile Radio Service Providers, at 16 (March 4, 1996) ("Economic Issues").

²¹ Id.

balance of calls between LEC subscribers and cellular users.

"[C]ellular systems on average received from LECs and terminated about a third as much total traffic as LECs received from CMRS providers and terminated."²²

Moreover, the costs incurred by CMRS providers to increase capacity to their networks differ from costs incurred by LECs. Properly assessed, on the basis of forward-looking capacity costs, CMRS termination is more costly than LEC termination. As demonstrated in Economic Issues, the principal costs of terminating traffic are capacity costs.²³ To add capacity to their networks to terminate calls, CMRS providers must resize switching capacity at the MTSO, subdivide (split) cells, and increase backhaul capacity.²⁴ LECs, on the other hand, need only to resize their end office switching capacity, tandem switches, and where utilized, their interswitch trunks.²⁵

The Sections 251 and 252 proceeding need not, and is not designed to, dwell on the important factual differences affecting LEC-CMRS interconnection arrangements. The ongoing LEC-CMRS interconnection proceeding²⁶ has created a record adequate for

²² Id.

²³ Id. at 12.

²⁴ Id. at 20.

²⁵ Id.

²⁶ Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking in CC

the Commission to decide the interconnection pricing issue, and it should do so in that proceeding.

III. Without Separate Consideration, the Numerous Issues to Be Addressed in This Proceeding May In Fact Hinder CMRS Providers' Competitive Entry into the Local Loop.

This proceeding has a myriad of issues which must be addressed. In the Notice, the Commission seeks comment on the respective Section 251 obligations imposed on three categories of service providers: (1) "incumbent" LECs, (2) LECs, and (3) telecommunications carriers. Moreover, some of the specific issues that the Commission must address include resale, number portability, dialing parity, access to rights-of-way, unbundled access, wholesale pricing, and reciprocal compensation for transport and termination of traffic.²⁷ These issues either do not apply or already have been (or are being) addressed for CMRS. CTIA opposes any Commission efforts to fold CMRS providers into this larger discussion.

If LEC-CMRS interconnection compensation issues are folded into this proceeding, the inevitable uncertainties and delays associated with this very important and difficult proceeding may well hinder CMRS providers from developing as rapidly as possible and ultimately becoming fully competitive with local exchange service providers. The only issue to be resolved for LEC-CMRS interconnection arrangements is the discrete issue of termination

Dockets 95-185 and 95-54, FCC 95-505 (released January 11, 1996).

²⁷ Notice at 67-84.

costs. As noted, the Commission currently is considering this matter. If the CMRS issue is included in the Sections 251 and 252 discussion in this Notice, it will complicate an already complicated docket. It also will remit the CMRS issue to a process that inevitably will involve multiple reconsideration and judicial appeals. The better course would be for the Commission to focus on CMRS interconnection compensation issues in the LEC-CMRS Interconnection proceeding. This will facilitate further development of the CMRS market, as well as local loop competition.

CONCLUSION

For these reasons, CTIA respectfully requests that the Commission forego regulating LEC-CMRS interconnection arrangements under Sections 251 and 252.

Respectfully Submitted,

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